24

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914 1915

No. [redacted] 213

JOHN F. DODGE & HORACE E. DODGE, APPELLANTS,

vs.

JAMES J. BRADY, COLLECTOR OF INTERNAL REVENUE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED JULY 30, 1914.

(24,325)

TRANSCRIPT OF RECORD

Supreme Court of the United States

October Term, 1913.

No.....

JOHN F. DODGE, HORACE E. DODGE,
Appellants,

vs.

JAMES J. BRADY, COLLECTOR OF INTERNAL REVENUE,
Appellee.

Appeal From the District Court of the United States
For the Eastern District of Michigan.

INDEX

	Page
Bill of Complaint	1
Chancery Subpoena	33
Notice of Motion for Preliminary Injunction	34
Proof of Service of Notice of Application for Leave to File Supplemental Bill of Complaint	35
Order Denying Motion for Preliminary Injunction	36
Order Granting Motion to File Supplemental Bill of Complaint	36
Supplemental Bill of Complaint	37
Motion to Dismiss Original and Supplemental Bills of Complaint	38
Notice of Hearing on Motion to Dismiss	40
Minutes of Proceeding on Motions	40
Decree Dismissing Bills	41
Petition for Appeal	42
Assignments of Errors	43
Order Allowing Appeal	44
Exceptions to Order Dismissing Bill	45
Bond	45
Citation	47
Praecipe	48

District Court of the United States

FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY.

JOHN F. DODGE, HORACE E. DODGE, Plaintiffs, vs. JAMES J. BRADY, Collector of Internal Revenue, Defendant.	No. 86.

BILL OF COMPLAINT

To the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity:

Plaintiffs state as follows:

1. The plaintiffs, John F. Dodge and Horace E. Dodge, are citizens of the United States and residents of the City of Detroit, in the State of Michigan, and are citizens of said State; they are partners in business under the firm name of Dodge Brothers, and they bring this suit in their own right, as individuals and as partners, and in behalf of themselves, and of all other individuals and partnerships similarly situated and circumstanced.

2. The defendant, James J. Brady, is a citizen of the United States and a resident of Detroit, in the Eastern

District of Michigan; he holds the office of Collector of Internal Revenue for the first collection district of Michigan, and he is is sued in both his official and individual capacity.

3. This is a case arising under the Constitution of the United States and under the laws of the United States. The jurisdiction of the court is invoked to determine the construction and to test the constitutional validity of Subdivision 2 of Division A of Section II. of the Act of Congress, entitled "An Act to reduce tariff duties and to provide revenue for the government and for other purposes," approved October 3, 1913.

Subdivision 1 of Division A of said Section II. and Subdivision (a) of Division G of said Section II. provide that there shall be levied, assessed, collected and paid annually an income tax of one per centum per annum upon the incomes of individuals, including their partnership gains and profits, and upon the incomes of corporations, joint stock companies, or associations and insurance companies, not including partnerships, and without discrimination between natural persons and artificial persons.

Subdivision 2 of Division A of said Section II. reads as follows:

> Subdivision 2. In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by which the total net income exceeds $20,000 and does not exceed $50,000, and 2 per centum per annum upon the

amount by which the total net income exceeds $50,000 and does not exceed $75,000, 3 per centum per annum upon the amount by which the total net income exceeds $75,000 and does not exceed $100,000, 4 per centum per annum upon the amount by which the total net income exceeds $100,000 and does not exceed $250,000, 5 per centum per annum upon the amount by which the total net income exceeds $250,000 and does not exceed $500,000, and 6 per centum per annum upon the amount by which the total net income exceeds $500,000.

All the provisions of this section relating to individuals who are to be chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment and collection of the additional tax imposed under this section.

Every person subject to this additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the impo-

sition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed.

And the fact that any such corporation, joint-stock company, or association, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business.

When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed.

4. Plaintiffs file this bill in their own behalf and in behalf of all other persons similarly situated and circumstanced who are not made parties because of the inconvenience arising from their very great number, and from the fact that they are resident in many different States and subdivisions of States throughout the United States, and from the further fact that their names are unknown to plaintiffs.

The plaintiffs make the following statement of the ultimate facts upon which they ask relief:

I.

That plaintiffs for some years last past have carried on and conducted as co-partners, under the firm-name of Dodge Brothers, the business of manufacturing automobile parts, and are now making automobiles of their own modeling, and which will be put on the market during the present year; that they are the only persons interested in said business, and the only persons who are members of the firm, and who share the profits and losses of said business; that they have never had any occasion to become incorporated, either for the purpose of escaping personal liability for the debts of the firm or business, or for the purpose of selling stock and enlisting investments in the business by other persons, and had intended and expected to continue to do business as a partnership for an indefinite period in the future.

II.

That on the 26th day of February, 1914, each of plaintiffs filed with the Collector of Internal Revenue for the First District of Michigan, on blanks furnished by said collector, his return of his net income from March 1, 1913, to December 31, 1913; that the return of plaintiff John F. Dodge is as follows:

Gross Income.

1. Total amount derived from salaries, wages, or compensation for personal service of whatever kind or in whatever form paid.....$ 62,500.00

3. Total amount derived from rents and from interest on notes, mortgages and securities.....	251.79
4. Total amount of gains and profits derived from partnership business, whether the same be divided and distributed or not.....	650,888.45
Total	$713,640.24
11. Total amount of income derived from dividends on the stock or from the net earnings of corporations, joint stock companies, associations, or insurance companies, subject to like tax.....	216,941.66
Total gross income.....	$930,581.90

General Deductions.

3. All National, State, county, school and municipal taxes paid within the year (not including those assessed against local benefits).....$	2,077.43

Summary.

1. Gross income	$930,581.90
2. General deductions	2,077.43
3. Net income	$928,504.47

Deductions and exemptions allowed in computing income subject to normal tax of one per cent:

4. Dividends and net earnings received or accrued, of corporations, etc., subject to like tax $216,941.66		
6. Specific exemption of $3,000 or $4,000, as the case may be.....	3,333.34	
		$220,275.00
7. Taxable income on which the normal tax of one per cent is to be calculated		$708,229.47
Normal tax of one per cent....		7,082.29

III.

That the return of plaintiff Horace E. Dodge is as follows:

Gross Income.

1. Total amount derived from salaries, wages, or compensation for personal service of whatever kind or in whatever form paid	$ 62,500.00
3. Total amount derived from rents and from interest on notes, mortgages and securities	156.57
4. Total amount of gains and profits derived from partnership business, whether the same be divided and distributed or not	650,888.45
Total	$713,545.02
11. Total amount of income derived from dividends on the stock or from the net earnings of corporations, joint stock companies, associations, or insurance companies, subject to like tax	216,941.66
	$930,486.68

General Deductions.

3. All National, State, county, school and municipal taxes paid within the year (not including those assessed on local benefits)	$ 968.27

Summary.

1. Gross income	$930,486.68
2. General deductions	968.27
Net income	$929,518.41

Deductions and exemptions allowed in computing income subject to normal tax of one per cent.

4. Dividends and net earn-

ings, received or accrued, of corporations, etc., subject to like tax	$216,911.66	
6. Specific exemption of $3,000 or $4,000, as the case may be	3,333.34	
Total deductions and exemptions		$220,275.00
7. Taxable income on which the normal tax of one per cent is to be calculated		709,243.41
Normal tax of one per cent		7,092.43

IV.

That annexed to and filed with the return of each of plaintiffs is a protest signed by them and by their counsel, of which the following is a copy:

Protest.

This protestant is advised by counsel and respectfully submits that the additional taxes levied on individuals by Subdivision 2, Division A, of the Income Tax Law are in conflict with the provision of the Fifth Amendment of the Constitution of the United States, that no person shall "be deprived of life, liberty or property without due process of law," in that no tax in addition to the normal tax of one per cent is levied or imposed by said law on the net incomes of corporations, joint-stock companies or associations, or insurance companies, thereby making an invidious, arbitrary and unreasonable discrimination against individuals and natural persons, and in favor of corporations and artificial persons; the tax on the income of corporations being imposed on the privilege of being a corporation, and the tax on individuals being a tax on the right to earn a living and to acquire property, which tax is not within the power granted to the Congress of the United

States by Sec. VIII., Art. 1, cl. 1, of the Federal Constitution "To lay and collect taxes, duties, imposts and excises;" which are required to be not only territorially uniform, but also uniform within and upon all persons and corporations belonging to the same class, and as such class subjected to a tax, duty, impost or excise.

The taxes on incomes imposed by the Act of October 3, 1913, are not taxes, duties, imposts or excise laid by Congress on the privilege of being a corporation, or on the privilege of inheritance, or on the privilege of earning a living and acquiring property, but are imposed under the authority of the Sixteenth Amendment of the Constitution of the United States on incomes as such from whatever source derived, and even if Congress has power to grade and rate the tax according to the amount of the income, it has no power to discriminate between the incomes of natural persons and those of corporations of the same amount or belonging to the same graded class.

For these and other reasons the taxes in addition to the normal tax of one per cent, proposed to be assessed against the net income set forth in the annexed return, are unconstitutional and void, and the undersigned respectfully protests against the same.

Detroit, Feb. 26, 1914.

(Signed by) JOHN F. DODGE.

Another copy:

(Signed by) HORACE E. DODGE,
By JOHN F. DODGE,
His Attorney-in-Fact.

FRED A. BAKER,
Counsel for Protestant,
526 Dime Bank Bldg., Detroit, Mich.

V.

That afterwards, to-wit: on the 13th day of March, 1914, the plaintiffs, by Fred A. Baker, their counsel and attorney-in-fact, submitted to the Hon. William H.

Osborn, the Commissioner of Internal Revenue in the Government of the United States, at his office in the Treasury Building, Washington, D. C., a letter, of which the following is a copy:

Washington, D. C., March 13, 1914.

Hon. William H. Osborn,
Commissioner of Internal Revenue,
Washington, D. C.

Dear Sir: John F. and Horace E. Dodge, of Detroit, Michigan, partners under the firm name of Dodge Brothers, desire to test before you and the courts the validity of some of the provisions of the income-tax law, enacted by Congress as section 2 of the act of October 3, 1913.

I.

They are advised and contend that the income tax law is defective and inoperative because it permits the Commissioner of Internal Revenue to make assessments under the law without first giving the individuals and corporations to be assessed notice of the time and place, when and where, they can be heard and be given an opportunity to show what their assessments should be.

They concede that this defect in the law can be cured by the Commissioner if he will give the necessary notice by either personal service or substituted service by mail, and they object to any assessments being made without such notice.

As far as their own assessments are concerned, they request the Commissioner to fix the time and place they will be given a hearing.

II.

They contend that the provisions of subdivision 2 of division A of section 2 of the act of October 3, 1913, levying an additional tax of from one to six per centum on the net incomes of individuals (including partnership gains and profits) exceeding $20,000, and not providing for such an addi-

tional tax on the net incomes of corporations exceeding $20,000, constitute a discrimination in favor of corporations and against individuals and partnerships, which is not within the power of Congress "to lay and collect taxes, duties, imposts, and excises," and is not within the power of Congress under the Sixteenth Amendment "to levy taxes on incomes from whatever source derived," and said provisions of the law are in conflict with the provisions of the Fifth Amendment of the Constitution of the United States, that no person shall "be deprived of life, liberty, or property without due process of law," and that "private property shall not be taken for public use without compensation."

III.

They further contend that the provisions of subdivision 2 of division A of section 2 of the act of October 3, 1913, that "for the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided and distributed, whether divided or distributed or not, of all corporations, joint stock companies or associations, however created or organized, formed, or fraudulently availed of, for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed," are subject to the same constitutional objections as are the preceding provisions of said subdivision, as more particularly set forth in the above second paragraph of this letter.

IV.

They further contend that the provisions of said subdivision 2, permitting corporations to withhold from taxation under the act such portion of their net gains and profits as may be reasonably necessary for the needs and purposes of the business in which they are engaged, coupled with provisions

of division D of said act, which do not permit individuals and partnerships to make a similar reservation from taxation under the act of a portion of their net gains and profits reasonably necessary for the needs and purposes of the business in which they are engaged, is a still further discrimination in favor of corporations and against individuals and partnerships, which is subject to the same constitutional objections as those set forth in the above second paragraph of this letter.

John F. and Horace E. Dodge, in their returns under the law filed February 26, 1914, with the Collector of Internal Revenue for the First District of Michigan, showed a net income for John F. Dodge of $708,228.47 and for Horace E. Dodge of $709,243.41, on which the normal tax of one per cent amounts to $14,174.72, and the surtaxes on which, computed at the rates fixed by the act, amount to $65,148.36. That in their said returns they did not carry out the surtax in the columns and blank spaces therefor, but did annex to and file with each of their said returns a protest, a copy of which is herewith enclosed.

They are not informed whether the corporation or corporations from which they received dividends have made gains and profits and earned accrued net income, on which Dodge Brothers would be subject to an additional surtax, and that is one of the questions on which they desire to be heard.

They also wish to be allowed to withhold from taxation under the act such portion of their net incomes as may be reasonably necessary for the needs and purposes of the business in which they are engaged.

They respectfully request an early hearing, and before any assessment is made against them, on all the questions involved in their assessments.

All of which is respectfully submitted.

FRED A. BAKER,
Counsel and Attorney-in-Fact for John F. Dodge and Horace E. Dodge.

Address: 526 Dime Bank Bldg., Detroit, Mich.

VI.

Notwithstanding said protest and letter, the Commissioner of Internal Revenue thereafter, to-wit: on the 1st day of May, 1914, without giving the plaintiffs, or either of them, a notice and an opportunity to be heard, and without any hearing, made income tax assessments against them and transmitted said assessments to James J. Brady, collector of Internal Revenue for the First District of Michigan, for collection.

Said assessments were general assessments for an aggregate amount against each of plaintiffs, but they consisted of three parts, and were computed as follows:

Assessment Against John F. Dodge.

1.	Normal tax of one per cent on taxable income of $708,229.47	$ 7,082.29
2.	Surtax on same amount	32,543.77
3.	Surtax on additional amount of $220,275.00 at 6 per centum	13,216.50
	Total assessment	$52,842.56

Assessment Against Horace E. Dodge.

1.	Normal tax of one per cent on taxable income of $709,243.41	$ 7,092.43
2.	Surtax on same amount	32,604.60
3.	Surtax on an additional amount of $220,275 at 6 per centum	13,216.50
		$52,913.53
	Less error in computation	50.00
		$52,863.53

VII.

That on the 10th day of May, 1914, plaintiff John F. Dodge was served with a notice from the Collector of Internal Revenue for the First District of Michigan in the words and figures following:

Form 647.
United States Internal Revenue.
NOTICE OF ASSESSMENT OF SPECIAL EXCISE AND INCOME TAX.
List for month of Feb., 1914.
United States Internal Revenue,
Office of the Collector.
First District of Michigan, at Detroit, Mich.,
May 8, 1914.

To John F. Dodge,
43 Boston Blvd.,
Detroit, Michigan.

You are hereby notified that a { special excise tax / income tax } under the provisions of section { 38 of the Act of / 2 of the Act of } August 5, 1909, / October 3, 1913, amounting to $52,842.56, has been assessed against you by the Commissioner of Internal Revenue and transmitted by him to me for collection. This tax is due and payable on or before the 30th day of June, 1914, to the person designated below in the manner set forth on the reverse side of this notice.

Payment may be made to James J. Brady, collector, at Detroit, Mich., or to James J. Brady, collector.

Bring This Notice With You.
Checks must be certified.

Reverse Side.

To avoid penalty and interest, taxes must be paid to the collector or person designated by him in such a manner as will enable him to place the same with his depositary and receive a certificate of deposit therefor not later than the close of

business of the date mentioned in the body of this notice.

Payment may be made in currency, post office money order, or certified check on a national or state bank or trust company, providing such checks can be collected without cost to the Government. It should be borne in mind by taxpayers that the date when such checks may be cashed and the money deposited is the date of payment, and allowance should be made accordingly.

Collectors cannot receive in payment of taxes uncertified checks, personal checks, drafts, or vouchers, and all indorsements by collectors on certified checks are made without recourse. Money orders and certified checks must be made payable to the Collector of Internal Revenue.

Plaintiff Horace E. Dodge on the same day was served with a like notice that his assessment was $52,863.53.

VIII.

On the 20th day of May, 1914, plaintiff John F. Dodge filed with said James J. Brady as collector of internal revenue an appeal or claim for the remission and abatement of the surtaxes so assessed against him, which claim was made out on blank form 47, and endorsed with the certificate of a deputy collector and the certificate of the collector, and verified and all in due form as required by said Form 47.

The reasons stated in said claim for the remission and abatement of said surtaxes were set forth therein as follows:

"Said assessment of $52,842.47 consists of three different items, to-wit: (1) A Normal tax assessment of $7,082.29; (2) a surtax computed on the net taxable income of $708,229.47, amounting to $32,543.77; and (3) a surtax computed at 6 per

cent upon an alleged additional income of $220,275.00, amounting to $13,216.50.

Deponent admits that the normal tax of $7,082.29 is valid, and he intends to pay the same; but he is advised and contends that the other two items, aggregating $45,760.27, are wrongful and void assessments, because subdivision 2 of division A of sec. II. of the Revenue Act of Congress of Oct. 3, 1913, is unconstitutional and void, said subdivision 2 not being within any power of taxation conferred on Congress and being in violation of the provisions of the Fifth Amendment of the Constitution of the United States, that no person shall be deprived of life, liberty or property without due process of law, and that private property shall not be taken for public use without just compensation."

A like claim was filed by Horace E. Dodge. Said claims were forwarded by the collector to the Commissioner of Internal Revenue in Washington, D. C., and the Commissioner now has the same under consideration. Counsel for plaintiffs has mailed to the commissioner a brief in support of their said claims, as appeals to him made under the statute, Sec. 3220, Rev. Stat. U. S.

IX.

On the 2nd day of June, 1914, the plaintiff John F. Dodge paid to James J. Brady, Collector of Internal Revenue, his normal tax assessment of $7,082.29, and plaintiff Horace E. Dodge paid to said collector his normal tax assessment of $7,092.43; and plaintiffs now hold receipts for the same.

X.

Regulations No. 14, revised, approved and prescribed by the Secretary of the Treasury as instructions to In-

ternal Revenue officers, contains at the top of page 16 the following:

> "Filing of a claim for abatement does not operate as a delay for collection."
>
> "The filing of a claim for the abatement of a tax alleged to have been erroneously assessed does not operate as a suspension of the collection of the tax, or make it any less the duty of the collector to exercise due diligence to prevent the collection of the tax being jeopardized. He should, if necessary, collect the tax and leave the taxpayer to his remedy by claim on Form 46."

Form 46 is a blank form for the refunding of taxes which have been collected or paid under protest.

XI.

The returns of the plaintiffs as set forth in the second and third paragraphs of this bill show that they each received dividends, chargeable to the last ten months of the year 1913, amounting to $216,941.66; that the commissioner added thereto the statutory exemption of $3,333.34, making a total of $220,275.00, on which he assessed them a surtax of 6 per centum, as hereinbefore alleged. That plaintiffs have been informed and believe, and charge the fact to be, that the corporation from which they received said dividends was not "created or organized, formed, or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided and distributed," and plaintiffs are advised and respectfully submit that on a correct construction of Subdivision 2 of Division A of said Section II. of the Act of October 3, 1913, they are not chargeable with and should not have been assessed a

surtax on said dividends, and the assessment thereof as made by the Commissioner of Internal Revenue was unauthorized by the act, and said assessments are erroneous, illegal and void.

XII.

The corporation from which the plaintiffs received their said dividends withheld from taxation under the act a portion of its gains and profits deemed by it reasonably necessary for the needs and purposes of the business in which it is engaged, and it accumulated the same as surplus, but without any fraudulent purpose to escape the taxation thereof; and the Secretary of the Treasury has not certified that in his opinion such accumulation is unreasonable for the purposes of the business.

Plaintiffs are advised and respectfully submit that permitting corporations to withhold from taxation a portion of their gains and profits as a surplus for the needs and purposes of the business in which they are severally engaged and not permitting individuals and partnerships to do so, is a discrimination against individuals and partnerships which is not within the power conferred on Congress by the Constitution to levy and collect taxes, duties, imposts and excises or the power conferred by the Sixteenth Amendment to levy and collect taxes on incomes from whatever source derived; and the provisions of the act purporting to authorize such classification and discrimination are in conflict with the provisions of the Fifth Amendment of the Constitution of the United States, that no person shall be deprived of life, liberty or property without due process of law, and that private property shall not be taken for public use without just compensation.

XIII.

Corporations in the United States created or organized for the purpose of engaging in business and making gains and profits are each composed of a number of stockholders, varying from two or three to thousands of stockholders, who combine their capital to escape personal liability for the debts of the corporation, and to enable them to engage in business as a unit, and as an artificial person, in competition in the business world with natural persons and partnerships.

Plaintiffs are advised and submit that the provisions of said act requiring natural persons to pay a graduated surtax, varying from one per centum to six per centum per annum, and permitting individuals who are stockholders in gainful corporations to distribute the gains and profits of such corporations among themselves, in proportion to their respective holdings of stock, and thereby reduce the aggregate of the surtaxes they are required to pay, by the application of the graduated rates, to their several assessments to a much less sum than individuals who are not stockholders in gainful corporations are required to pay, is an unjust and unwarranted classification of natural persons, dividing them into one class who are not stockholders in gainful corporations and into another class who are such stockholders is not within the power conferred on Congress by the Constitution to levy and collect taxes, duties, imposts and excises or the power conferred by the Sixteenth Amendment to levy and collect taxes on incomes from whatever source derived, and the provisions of the act purporting to authorize such classification and discrimination are in conflict with the provisions of the Fifth Amendment of the Constitution of the United States,

that no person shall be deprived of life, liberty or property without due process of law, and that private property shall not be taken for public use without just compensation.

XIV.

Plaintiffs are advised and respectfully submit that the provisions of said Subdivision 2 of Division A of Section II. of the Revenue Act of Congress of October 3, 1913, separately and collectively considered, are a violation of the provisions of the Constitution of the United States mentioned above, and said Subdivision 2 is unconstitutional and void because not within any of the powers possessed by the Government of the United States.

XV.

Plaintiffs are advised and, for the convenience of the court, say that Section 3220, 3224 and 3226 of the Revised Statutes of the United States read:

> Sec. 3220. "That the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount or in any manner wrongfully collected; and also repay to any collector or deputy collector the full amount of such sums of money as shall or may be recovered against him in any court for any internal taxes collected by him, with the costs and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit which shall be brought

against him by reason of anything done in the due performance of his official duty," etc.

Sec. 3224. "No suit for the purposes of restraining the assessment or collection of any tax shall be maintained in any court."

Sec. 3226. "No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive, or in any manner wrongfully collected until appeal shall have been duly made to the Commissioner of Internal Revenue according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: *Provided*, That if said decision shall be delayed more than six months from the date of such appeal, then said suit may be brought without first having a decision of the commissioner at any time within the period limited in the next section."

The next section fixes the period of limitation at two years next after the cause of action accrued.

XVI.

Plaintiffs are advised and respectfully submit that the statutory provisions set forth in the preceding paragraph of this bill only apply to cases where the assessments are within the jurisdiction of the officers authorized to make them, and are merely erroneous, but not void, and that they do not apply to cases where the assessments are not within the jurisdiction of the officer and are wholly void; that an unconstitutional act of Congress levying a tax confers no authority and no valid assessment or collection can be made under it, and if an officer collects such a tax, he seizes or receives the money in his private capacity, and is not bound to turn the money

into the Treasury of the United States, for the reason that the Constitution being the supreme law, it cannot be said that the United States have authorized the tax to be assessed and collected.

If said statutory provisions are construed to apply to unconstitutional tax assessments and collections, they are to the extent of such application in conflict with the constitutional provisions mentioned above and with the provision of Sec. II. of Art. III. of the Constitution of the United States, that "the judicial power of the United states shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority," etc.

XVII.

Plaintiffs have been informed and believe, and charge the fact to be, that there are over 300,000 individuals in the United States who have net incomes of more than $3,000 and subject to the normal tax of one per cent, and over 10,500 of them have net incomes exceeding $20,000 and subject to surtax; that there are over 100,000 corporations, joint-stock companies or associations, and insurance companies in the United States having net incomes subject to the normal tax of one per cent; that more than 400,000 returns have been made under the law and have been received by the Commissioner of Internal Revenue, the Hon. William H. Osborn, Washington, D. C.; that the commissioner has made assessments on each of said returns and transmitted the same to the Collectors of Internal Revenue for the several collection districts from which the returns were received without giving the persons and corporations making the returns any notice or any opportunity to be heard, and the said

collectors have given notice to each of said persons and corporations of the amounts of their respective assessments similar to the notices served on plaintiff hereinbefore set forth.

Plaintiffs submit on behalf of themselves and all others similarly situated and circumstanced that the procedure for the assessment and collection of income taxes prescribed by the Act of October 3, 1913, is in conflict with the due process of law clause of the Fifth Amendment, in that the assessments are to become effectual and are to be collected before the persons and corporations assessed are given any opportunity to be heard, and then only on the condition that they have first paid the income taxes assessed against them.

XVIII.

Plaintiffs, on behalf of themselves and other parties interested, invoke the jurisdiction and powers of the courts of equity of the United States on the familiar and well-settled ground that the said courts have jurisdiction to prevent a multiplicity of suits and vexatious and prolonged litigation, and on the further ground that the remedies at the common law and under the statutes of the United States are wholly inadequate and altogether worthless, and on the additional ground that upon the facts and circumstances of this case it is a typical cause for the exercise of the judicial power conferred on courts of equity by the Constitution of the United States. The facts relied on to show jurisdiction are as follows:

There are in the United States more than 10,000 individuals who are each chargeable and assessable with a surtax varying in amount from one to six per centum, and there are more than 10,000 other individuals who

own stock in corporations and who are each chargeable and assessable with a surtax on "the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies or associations, however created or organized, formed or fraudulently availed of, for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed."

All which surtaxes are to be "levied, assessed and collected," without any notice or opportunity to be heard, by the Commissioner of Internal Revenue, in Washington, D. C., although said surtaxes, as plaintiffs allege, are not within any power of taxation conferred on Congress by the Constitution of the United States or the Sixteenth Amendment and are a violation of the provisions of the Fifth Amendment that no person shall be deprived of life, liberty or property without due process of law and that private property shall not be taken for public use without compensation.

After these taxes have been collected and the money paid into the Treasury of the United States it will require more than 20,000 suits and judgments to get it out again and restored to those who have been compelled to pay it in; and before any suit can be commenced a claim to refund must be presented to the Commissioner of Internal Revenue and six months be allowed to him in which to make his decision.

Plaintiffs are informed and believe and charge the fact to be, that individuals and partnerships engaged in manufacturing and other industrial enterprises for gains and profits are compelled to use large sums of money as a working fund or capital and to turn the same over

many times in a year, and that to be forced to withdraw the same would work an irreparable injury, for the reason, among others, that it could not be estimated and computed in dollars and cents, although none the less serious and substantial, and this is especially true when applied to a large number of individual and partnership concerns which are to a large extent dependent on each other for a continuance of orders or for the prompt filling of orders that have been accepted.

The withdrawal of large sums of money from manufacturing and industrial enterprises during the uncertain and indefinite periods of time necessary to recover it back must necessarily be very injurious to the business interests of the country.

Each claimant must bring an action against the officer who has compelled him to pay an illegal or unconstitutional tax; the suit must be tried and a judgment rendered for damages and costs, and the judgment so obtained is subject to review in the proper court of last resort. When the judgment has been finally affirmed an exemplified copy of it, and of the record in the case, must be presented to the proper officer, and in some cases must be accompanied with a certificate from the court that the officer who compelled payment had probable cause for doing so; and if a warrant on the Treasury is then refused, an action against the United States must be commenced in the Court of Claims and be prosecuted to final judgment.

Plaintiffs, in behalf of themselves and all others interested, respectfully submit that the statutory action is so vexatiously dilatory and inadequate as to warrant and require an exercise of the jurisdiction of the courts of equity of the United States.

Cloud on Title.

Plaintiffs are possessed of large amounts of personal property, consisting of goods and chattels, machinery, tools and appliances, in use, and materials on hand, at their manufacturing plants in the City of Detroit, and the Township of Hamtramck in the first collection district of Michigan; and they are also seized and possessed of the parcels of land, and real estate on which their plants are located, and also of other parcels of real estate, situated in the City of Detroit, and the Township of Hamtramck, in the first collection district of Michigan; and all of which real and personal estate will be subject to the lien of the United States, under Section 3186 of the Revised Statutes of the United States, and to seizure and sale under Sections 3187 to 3207.

That the income tax assessments made by the Commissioner of Internal Revenue, against the plaintiffs, are in part valid, and in part unconstitutional and invalid, and, being *prima facie* good, such assessments will constitute a cloud on the title of the plaintiffs to their said real and personal estate, and for the prevention or removal of which cloud the plaintiffs are entitled to and do hereby invoke the judicial power of the courts of equity of the United States.

XIX.

Prayer for Special Relief.

For the purpose of obtaining injunctive relief pending the suit the plaintiffs hereby offer to pay the surtaxes assessed against them respectively into court to abide the result of the case in this court and in the Supreme

Court of the United States; or if the court so directs, they will pay the money to the defendant herein, the collector of Internal Revenue for the First District of Michigan, under protest, and the duress of the court, and of the threatened compulsory collection of the tax with the addition of a five per centum penalty and interest, and in the event of such payment plaintiffs pray for a prompt and speedy decree against the defendant for the amounts so paid by them, and for costs, according to the provisions of Sec. 3220, Rev. Stat. United States, and of New Federal Equity Rules, No. 22 and No. 23.

Prayer for Relief.

Plaintiffs pray that James J. Brady, the Collector of Internal Revenue for the First District of Michigan, residing and having his office in Detroit, Michigan, may be made the defendant in this bill of complaint, and that he may be required to answer this bill fully and particularly, paragraph by paragraph, an answer on oath being hereby expressly waived, and that relief may be granted as follows:

1. That the income-tax law, contained in the act of Congress of October 3, 1913, may be decreed and declared defective and inoperative for the reason that it provides for the assessment and collection of income taxes without any personal or public notice of the time or place when the individuals and corporations to be assessed will be heard and be given an opportunity to show what their assessments in justice and right ought to be, said income-tax law, being in this particular in conflict with the provision of the Fifth Amendment of the Constitution of the United States that no person shall be deprived of life, liberty, or property without due process of law.

2. That the provisions of subdivision 2 of division A of section 2 of the act of October 3, 1913, providing for the levy, assessment, and collection of an additional tax on the incomes of individuals exceeding $20,000 may be decreed and declared to be unconstitutional and void for the reason that the discrimination in favor of corporations and against individuals and partnerships, is not within the power conferred on Congress to lay taxes, duties, imposts, and excises or the power conferred by the Sixteenth Amendment to levy taxes on incomes from whatever source derived, and said provisions are in conflict with the provisions of the Fifth Amendment of the Constitution of the United States that no person shall be deprived of life, liberty, or property without due process of law, and that private property shall not be taken for public use without compensation.

3. That the provisions of subdivision 2 of division A of section 2 of the act of Congress of October 3, 1913, providing "that for the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed, or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains, and profits, to accumulate instead of being divided or distributed," may be decreed and declared to be unconstitutional and void for the reason that said provisions provide for a further discrimination in favor of corporations and against individuals and partnerships, which is not within the power conferred on Congress to lay taxes, duties, imposts, and excises, or the power conferred by the Sixteenth Amendment to levy taxes on incomes from whatever service derived and said

provisions are in conflict with the provisions of the Fifth Amendment of the Constitution of the United States that no person shall be deprived of life, liberty, or property without due process of law, and that private property shall not be taken for public use without compensation.

4. That the provisions of section 2 of the act of Congress of October 3, 1913, which permit corporations, joint-stock companies or associations, to withhold from taxation such portion of their gains and profits as may be reasonably necessary for the needs and purposes of the business in which they are engaged and denies such permission and privilege to individuals and partnerships, may be decreed and declared to be unconstitutional and void for the reason that said provisions provide for a further discrimination in favor of corporations and against individuals and partnerships which is not within the power conferred on Congress to lay taxes, duties, imposts, and excises, or the power conferred by the Sixteenth Amendment to levy taxes on incomes from whatever source derived, and said provisions are in conflict with the provisions of the Fifth Amendment of the Constitution of the United States that no person shall be deprived of life, liberty, or property without due process of law, and that private property shall not be taken for public use without compensation.

5. That James J. Brady, Collector of Internal Revenue for the First District of Michigan may be temporarily and perpetually enjoined from collecting by distraint of personal property or sale of real estate, or otherwise, the surtaxes of $45,760.27 assessed against John F. Dodge, and the surtaxes of $45,820.10 assessed against Horace E. Dodge.

6. That plaintiffs may have such further or other legal or equitable relief in the premises as may be agreeable

to equity and good conscience, or law and justice may require.

Prayer for Process.

Plaintiffs pray that process for the appearance of James J. Brady, the defendant herein, may be issued according to the rules and practice of the court, and that a temporary injunction may be issued out of and under the seal of the court restraining and enjoining the defendant until the further order of the court, as set forth and prayed in the foregoing prayers for relief, and that on the final hearing of the case said injunction may be made perpetual.

And plaintiffs will ever pray.

JOHN F. DODGE,

HORACE E. DODGE,
Plaintiffs.

FRED A. BAKER,
Solicitor for Plaintiffs,
526 Dime Bank Bldg.,
Detroit, Mich.

STATE OF MICHIGAN,
COUNTY OF WAYNE—SS.

On this 9th day of June, 1914, before me, a Notary Public in and for said county, personally appeared John F. Dodge and Horace E. Dodge, the plaintiffs in the within and foregoing bill of complaint, and each made oath that he had read and knows the contents of said bill, and the same is true of his own knowledge, except

as to the matters and things therein stated to be on information and belief, and as to such matters he believes the same to be true.

A. L. McMEANS,
Notary Public,
Wayne Co., Mich.

My commission expires May 23, 1916.

CHANCERY SUBPOENA.

(Issued June 10, 1914; Returned, Served, Filed June 11, 1914.)

District Court of the United States of America for the Sixth Circuit and Eastern District of Michigan, Sitting in Chancery.

(Seal of Court.)

The President of the United States of America,

To James J. Brady, individually, and as Collector of Internal Revenue for the first collection district of Michigan, a citizen of the United States and a resident of Detroit, in the Eastern District of Michigan.

You are hereby commanded to be and appear in the District Court of the United States of America for the Sixth Circuit and Eastern District of Michigan, sitting in Chancery, before the Judges thereof, at the District Court Room, in the City of Detroit, Michigan, within twenty days from the date hereof, then and there to answer unto a Bill of Complaint exhibited against you as defendant by John F. Dodge and Horace E. Dodge, citizens of the United States and residents of the City of Detroit in the State of Michigan, and citizens of said State, partners in business under the firm name of Dodge Brothers, bring this suit as individuals and as partners, and in behalf of themsedves and all other individuals and partnerships similarly situated and circumstanced, as Complainants. And this you shall in no wise omit under the penalty of One Thousand Dollars.

Witness, The Hon. Arthur J. Tuttle, United States District Judge for the Eastern District of Michigan, this Tenth day of June in the year of our Lord one thousand nine hundred and fourteen and of the Independence of the United States the one hundred and thirty-eighth.

Elmer W. Voorheis,
Clerk.

By Carrie Davison,
Deputy.

Memorandum.—The above named defendant is required to file his answer or other defense in this suit with the clerk of this court, at his office in the City of Detroit on or before twenty days after service of this Writ of Subpoena, excluding the day of service thereof, otherwise the Bill of Complaint may be taken pro confesso against said defendant.

Elmer W. Voorheis,
Clerk.

By Carrie Davison,
Deputy.

Eastern District of Michigan, ss.

I hereby certify and return, that upon the 11th day of June A. D. 1914, I served the within Chancery subpoena on James J. Brady individually and as Collector of Internal Revenue, etc., the within named, at Detroit in said District, by delivering to him a true copy thereof, also exhibiting this writ with the seal of the court impressed thereon, said copy having a like Memorandum appended thereto as is hereto appended.

Henry Behrendt,
Marshal.
By Vernon LeClear,
Deputy.

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION AND PROOF OF SERVICE.

(Filed June 11th, 1914.)

To said Defendant:

You are hereby notified that on the 16th day of June, 1914, at the opening of court or as soon thereafter as counsel can be heard the plaintiffs will move the court to grant a temporary injunction restraining and enjoining you until the further order of the court from collecting or attempting to collect from the plaintiffs or either of them the surtaxes assessed against John F. Dodge of $45,760.27 and against Horace E. Dodge of $45,820.10, in their income tax assessments in your hands as collector of Internal Revenue for collection.

Said motion will be based on the bill of complaint of plaintiffs with a copy of which you are herewith served.

Fred A. Baker,
Solicitor for Plaintiffs.

Dated, Detroit, Mich., June 9, 1914.

Eastern District of Michigan, ss.

Fred A. Baker being duly sworn deposes and says that on the 10th day of June, 1914, he served a copy of the above and foregoing notice and of the bill of complaint therein men-

tioned on James J. Brady, Collector, and on Cylde I. Webster, U. S. Dist. Atty., by delivering the same to each of them in person at their offices in Federal Bldg., Detroit, Mich.

Fred A. Baker.

Subscribed and sworn to before me this 11th day of June, 1914.

Bernard Goldman.
Notary Public, Wayne Co., Mich.
My commission expires March 14, 1915.

PROOF OF SERVICE OF NOTICE OF APPLICATION FOR LEAVE TO FILE SUPPLEMENTAL BILL OF COMPLAINT.

(Filed June 22, 1914.)

To Clyde I. Webster,
United States District Attorney,
Detroit, Mich.

You are hereby notified that on Monday the 29th day of June, 1914, at the opening of court on that day or as soon thereafter as counsel can be heard the plaintiffs will apply for leave to file and serve a supplemental bill alleging material facts occurring after the original bill in the above entitled cause was filed.

The above and foregoing is a copy of the supplemental bill proposed to be filed.

Fred A. Baker,
Solicitor for Plaintiffs.

Eastern District of Michigan, ss.

Fred A. Baker being duly sworn, deposes and says that on the 22d day of June, 1914, he served a notice of which the above is a true copy on Clyde I. Webster, United States District Attorney and Solicitor for Defendant by delivering the same to him in person at his office in the Federal Building in Detroit, Mich.

Fred A. Baker.

Subscribed and sworn to before me this 22d day of June, 1914.

Carrie Davison,
Deputy Clerk, U. S. Dist. Court, East. Dist. of Michigan.

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION.

(Entered June 29, 1914.)

The motion of the plaintiffs for a temporary injunction restraining the defendant until the further order of the court from collecting or attempting to collect from the plaintiffs the surtaxes assessed against them in their income tax assessments in the hands of the defendant as collector of Internal Revenue for collection, came on for argument, and Fred A. Baker, having been heard for the plaintiffs and Clyde I. Webster, District Attorney, having been heard for the defendant, and the court having duly considered the same,

It is ordered, adjudged and decreed that said motion be, and it is hereby denied.

Arthur J. Tuttle,
District Judge.

ORDER GRANTING MOTION FOR LEAVE TO FILE SUPPLEMENTAL BILL OF COMPLAINT.

(Entered June 29, 1914.)

The motion of the plaintiffs for leave to file a supplemental bill alleging facts which have occurred since the original bill was filed, came on for argument and Fred A. Baker having been heard for the plaintiffs, and Clyde I. Webster, District Attorney having been heard for the defendant, and the court having duly considered the same,

It is ordered, adjudged and decreed that said motion be and the same is hereby granted, and thereupon the plaintiffs in open court paid to the defendant the surtaxes assessed against them under protest, and filed the supplemental bill proposed by them.

Arthur J. Tuttle,
District Judge.

SUPPLEMENTAL BILL OF COMPLAINT.

(Filed June 29, 1914.)

To the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity:

The plaintiffs, by leave of the court, file this supplemental bill, and reaffirming, and again alleging all the facts set up in the original bill to be true, they make the following allegations of facts which have occurred since the original bill was filed.

I.

On the 15th day of June, 1914, the Hon. William H. Osborn, Commissioner of Internal Revenue, in the government of the United States, at his office in the Treasury Building, in Washington, D. C., rejected the appeals and claims to him made by the plaintiffs as set forth in the VIII paragraph of the original bill and decided that the plaintiffs were not entitled to have the surtaxes assessed against them, or either of them, or any part thereof remitted or abated

II.

On the 29th day of June, 1914, this court having refused to grant an injunction restraining the defendant James J. Brady, collector of Internal Revenue, from collecting the surtax of $45,760.27, assessed against plaintiff John F. Dodge, and the surtax of $45,771.10 assessed against the plaintiff Horace E. Dodge, each of the plaintiffs paid to the defendant James J. Brady, collector of Internal Revenue for the First Collection District of Michigan, the surtaxes so assessed against them, and now hold receipts for the same; that the commissioner of Internal Revenue in making the assessment against Horace E. Dodge made an error against the Government of $50. and the amount actually paid by Horace E. Dodge was $45,821.10 and by John F. Dodge $45,760.27; making the total amount they are entitled to recover $91,581.37 and interest.

III.

Said payments were made under duress and protest; that the written protest presented to and filed with the Collector of Internal Revenue, at the time of making said payments were as follows:

To James J. Brady,

Collector of Internal Revenue.

You are hereby notified that the undersigned pays the surtaxes of $45,821.10 assessed against him in his income tax assessment, under duress and protest on the ground that Subdivision 2 of Division A. of the Revenue Act of Congress of Oct. 3, 1913, is unconstitutional and void in that it conflicts with the provisions of the Fifth Amendment of the Consti-

tution of the United States that no person shall be deprived of life, liberty or property without due process of law, and is not within the power of congress to levy and collect taxes, duties, imposts and excises or the power of Congress to levy and collect taxes on incomes from whatever source derived.

And also upon the ground that a part of said surtaxes to wit: $13,216.50 upon an alleged taxable income of $220,275.00 is not authorized by said subdivision 2 of Division A. of the law.

You are notified not to pay the money into the treasury of the United States, and that an action will be brought against you for its recovery. The money is paid under duress and protest to prevent you from collecting the tax by a distraint of personal property or a sale of real estate, and the addition of a five per cent penalty and interest.

(Signed) Horace E. Dodge.
(Signed) John F. Dodge.

Another copy mentioning $45,760.27.

Having made said payments plaintiffs renew their prayer for a prompt and speedy decree against the defendant for the amounts so paid by them, and for costs according to the provisions of sec. 3220 Rev. Stat. United States, and of New Federal Equity Rules No. 22 and 23, and they also renew their other prayers for relief set forth in the original bill.

Fred A. Baker,
Solicitor for plaintiffs.

MOTION TO DISMISS ORIGINAL AND SUPPLEMENTAL BILLS OF COMPLAINT.

(Filed June 29, 1914.)

Now comes the defendant, James J. Brady, Collector of Internal Revenue, by his attorney Cldye I. Webster, United States Attorney for the Eastern District of Michigan, and moves the Court to dismiss the original bill of complaint and the supplemental bill of complaint filed in the above entitled cause, and for grounds therefor, says:

(1) That the above entitled cause is a suit brought for the purpose of restraining the assessment and collection of a

tax of the United States, and as such cannot be maintained.

(2) That it appears upon the face of the bill of complaint and supplemental bill that the plaintiffs have a plain, adequate and complete remedy at law.

(3) That the said bill of complaint and supplemental bill fail to state facts to make a case cognizable by a Court of Equity.

(4) That it appears upon the face of said bill and said supplemental bill that at the time the original bill was filed the taxes complained of had not been paid and no appeal had been made to the Commissioner of Internal Revenue, both of which are necessary before suit can be instituted.

(5) That it appears upon the face of the said bill of complaint and said supplemental bill that it is sought by this suit to control and interfere with the Collector of Internal Revenue, an executive officer of the United States, in the performance of his official duties in matters vested solely in the judgment and discretion of said Collector and his Superior, the Commissioner of Internal Revenue, and as such cannot be maintained.

(6) That it appears upon the face of the said bill of complaint and supplemental bill that this Court has no power to grant the relief prayed for or any relief whatsoever as against said defendant.

(7) That the Income Tax Law of October 3rd, 1913, and each of the provisions referred to in said bill of complaint are constitutional and valid.

(8) That Equity Rules Nos. 22 and 23 do not apply in any case unless the Court has jurisdiction at the time the original bill is filed.

(9) And for other reasons appearing of record.

Clyde I. Webster,
United States Attorney for the Eastern District of Michigan
Attorney for James J. Brady, Collector of Internal Revenue.

NOTICE OF HEARING OF MOTION TO DISMISS ORIGINAL AND SUPPLEMENTAL BILLS OF COMPLAINT.

(Filed June 29, 1914.)

To Fred A. Baker,
Solicitor for Plaintiffs.

You are hereby notified that on Monday, the sixth day of July, 1914, at the opening of Court on that day or as soon thereafter as counsel can be heard, defendant will bring on for hearing a motion to dismiss the bill of complaint filed in the above entitled cause, a copy of which motion is hereto attached.

Clyde I. Webster,
United States Attorney for the
Eastern District of Michigan.

MINUTES OF PROCEEDINGS BEFORE COURT ON MOTIONS OF PLAINTIFFS AND DEFENDANT.

(Filed July 1st, 1914.)

This cause coming on to be heard on the motion of plaintiffs for a temporary injunction, counsel having been heard and the matter being duly considered by the court, the motion for temporary injunction was denied.

Counsel for plaintiffs ask leave to file a supplemental bill alleging the facts which have occurred since the original bill was filed.

Counsel for the defendant objects to the filing of any supplemental bill, and after argument by counsel it was ordered that the plaintiffs have leave to file a supplemental bill and they thereupon filed such bill in open court.

The motion made for counsel for the defendant, to dismiss the bill of plaintiffs was by the consent of counsel taken up for argument and it was heard and submitted to the court; and by consent of counsel an additional ground to defendant's motion to dismiss was added by reason of the filing of the sup-

plemental bill and by consent of counsel, both motions, the motion to dismiss the original bill, and the motion to dismiss the original and supplemental bill, were argued and submitted.

Thereupon said motion was granted and an order entered dismissing the original and supplemental bills.

The court stated that after examining the authorities he was of the opinion that the law was constitutional and that said bill should be dismissed.

DECREE DISMISSING ORIGINAL AND SUPPLEMENTAL BILLS OF COMPLAINT.

(Entered June 29, 1914.)

The motion of the defendant to dismiss the original bill in this cause, and the motion of the defendant to dismiss the original bill and the supplemental bill, came on, by consent of counsel in open court, to be heard on this day, and Clyde I. Webster, District Attorney having been heard for the defendant, and Fred A. Baker, having been heard for the plaintiffs, and the court having duly considered the question whether the provisions of subdivision 2 of Division A. of Section II of the Revenue Act of Congress of Oct. 3, 1913 levying additional taxes on the incomes of individuals is constitutional, and the court being of the opinion that said subdivision 2 is constitutional,

It is ordered, adjudged and decreed that said original and supplemental bills be and they are hereby dismissed, and that the defendant recover his costs of suit to be taxed.

Arthur J. Tuttle,
District Judge.

PETITION FOR APPEAL.

(Filed June 29, 1914.)

To said Court:

Your petitioners John F. Dodge and Horace E. Dodge, respectfully represent and showeth

1. That on this the 29th day of June, 1914, this court dismissed the original bill and also the supplemental bill of the plaintiffs in the above entitled cause with costs.

2. That the Court held that subdivsion two of division A. of section 2 of the Revenue Act of Congress of Oct. 3, 1913, is constitutional and valid.

3. That your petitioners are aggrieved by the decree of the court dismissing their said bills and they desire to appeal and do hereby appeal from said decree to the Supreme Court of the United States.

4. Your petitioners herewith file an assignment of error as required by Supreme Court Rule No. 35.

Wherefore your petitioners pray that their appeal from said decree dismissing their said bills may be allowed and the penalty of the appeal bond to be filed by your petitioners may be fixed by an order of this court and that said bond and the surety therein may be duly approved.

John F. Dodge,
Horace E. Dodge,
By Fred A. Baker,
Their Solicitor.

Eastern District of Michigan, ss.

On this the 29th day of June, 1914, before me the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division, personally appeared Fred A. Baker who made oath that he is the solicitor of John F. Dodge and Horace E Dodge and signed the above petition on their behalf and by their authority and that he has read and knows the contents of the said petition and the same is true of his own knowledge.

Elmer W. Voorheis,
Clerk U. S. Eastern District
of Michigan.

ASSIGNMENT OF ERRORS.

(Filed June 29, 1914.)

The Plaintiffs and Appellants by Fred A. Baker, their solicitor, say that there is manifest error, in the record and proceedings aforesaid, and in the decree and judgment of the court dismissing the original and the supplemental bills in the above entitled cause, in this to wit:—

1. The court erred in refusing to grant the temporary injunction prayed by the plaintiffs and in denying the motion of the plaintiffs for an injunction restraining the defendants from collecting the surtaxes assessed against them in their income tax assessments.

2. The court erred in holding that subdivision 2 of Division A of section 2 of the revenue act of Congress of Oct. 3, 1913, is constitutional and valid.

3. The court erred in granting the motions of the defendant to dismiss the original and supplemental bill of the plaintiffs.

4. The court erred in holding that section 3224 of the Revised Statutes of the United States applies to the case of the plaintiffs.

5. The court erred in refusing to hold that if said section 3224 applies to the case of the plaintiffs, it is to the extent of such application unconstitutional and void, because in conflict with the provision of the Constitution of the United States that the judicial power of the United States in cases at law and in equity, is vested in the Supreme Court of the United States and in such inferior courts as may be created by Congress.

6. The court erred in refusing to hold that the said subdivision 2 of Division A. of section 2 of the Revenue Act of Congress of Oct. 3, 1913, and the surtaxes levied thereunder are in conflict with the provisions of the Fifth Amendment of the Constitution of the United States that no person shall be deprived of life, liberty or propery without due process of law, and that private property shall not be taken for the public use without just compensation.

7. The court erred in holding that the surtax on the alleged income of $220,275 at the rate of 6% assessed against each of the plaintiffs is within said subdivision 2 and is authorized by the same.

8. The court erred in refusing to render a decree and judgment in favor of the plaintiffs and against the defendant for the recovery of the surtaxes so assessed against them, and paid by them under protest as set forth in their said supplemental bill.

Wherefore the plaintiffs and appellants pray: That the said decree of the District Court of the United States for the Eastern District of Michigan, Southern Division, may be vacated and reversed and that the said court may be directed by the mandate of the Supreme Court of the United States to entertain jurisdiction of the said original bill and supplemental bill, and to render a judgment in favor of the plaintiffs and appellants for the surtaxes so paid by them under protest together with interest and costs of suit.

Fred A. Baker,
Solicitor for Plaintiffs and Appellants.

ORDER ALLOWING APPEAL AND FIXING BOND AT $500.

(Entered June 29, 1914.)

The Complainants having presented to the Court, by their Solicitor, Fred A. Baker, assignment of errors and a petition for the allowance of an appeal to the Supreme Court of the United States, from the decree dismissing the Original and Supplemental Bills of Complaint herein, said appeal is by the Court now here allowed, and bond on appeal fixed at the sum of Five Hundred (500) Dollars.

Arthur J. Tuttle,
District Judge.

EXCEPTION OF SOLICITOR FOR DEFENDANT TO FORM OF ORDER DISMISSING BILL OF COMPLAINT.

(Filed June 30, 1914.)

Now comes the defendant in the above entitled cause and files an exception to the order of Court permitting plaintiffs to file supplemental bill and to the form of the order as signed by the Court granting defendant's motion and dismissing the original bill and supplemental bill, the order as signed having been drawn by counsel for plaintiffs and specifically mentioning only one ground of the motion, namely, the constitutionality of the Act, counsel for defendant insisting that the order should simply state that the motion of defendant to dismiss is granted, and that both original and supplemental bills are dismissed. Counsel for defendant does not believe that these bills can be maintained even if the Supreme Court should decide that this Act, or the subdivision of the Act involved is unconstitutional, and desires the record to show that the order as signed was over his objection, and that he did not consent that the constitutional question alone be considered, but urged that the bills should be dismissed as well for the other reasons set forth in defendant's motion to dismiss.

Clyde I. Webster,
Solicitor for Defendant.

BOND ON APPEAL.

(Filed June 30, 1914.)

Know All Men By These Presents, That we, John F. Dodge, and Horace E. Dodge, as principals and Alfred L. McMeans and Fred A. Baker, as sureties, are held and firmly bound unto James J. Brady, collector of Internal Revenue in the full and just sum of Five Hundred ($500) dollars, to be paid to the said James J. Brady or his certain attorney, executors, administrators, or assigns: to which payment, well

and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 30th day of June, in the year of our Lord one thousand nine hundred and fourteen.

Whereas, lately at a session of the District Court of the United States for the Eastern District of Michigan, Southern Division, In Equity in a suit depending in said Court, between John F. Dodge and Horace E. Dodge as plaintiffs and James J. Brady, collector of Internal Revenues as defendant, a decree was rendered against the said plaintiffs and the said plaintiffs have appealed therefrom to the Supreme Court of the United States, and their appeal has been allowed by the court, and they having obtained a citation directed to the said James J. Brady, collector of Internal Revenue citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, The Condition of The Above Obligation Is Such That if the said John F. Dodge and Horace E. Dodge shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

John F. Dodge (Seal).
Horace E. Dodge (Seal).
By A. L. McMeans,
their Atty in fact.
Alfred L. McMeans (Seal).
Fred A. Baker (Seal).

Sealed and delivered in presence of—
Bertha Williams.

Approved by—
Arthur J. Tuttle,
District Judge.

CITATION AND PROOF OF SERVICE.

(Filed June 30, 1914.)

United States of America, ss.
To James J. Brady, Collector of Internal Revenue,
Detroit, Mich.
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Michigan, in Equity, wherein John F. Dodge and Horace E. Dodge are appellants and you are appellee, to show cause, if any there be, why the judgment and decree rendered against the said appellants in said court should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 30th day of June, in the year of our Lord one thousand nine hundred and fourteen.

Arthur J. Tuttle,
District Judge for the
Eastern District of Mich.

Eastern District of Michigan, ss:

On this 30th day of June, in the year of our Lord one thousand nine hundred and fourteen, personally appeared Fred A. Baker before me, the subscriber, the Clerk of the District Court of the United States for the Eastern District of Michigan, and makes oath that he delivered a true copy of the within citation to James J. Brady, Collector of Internal Revenue for the 1st Collection District of Michigan on the 30th day of June, 1914, at Detroit, Mich.

Fred A. Baker.

Sworn to and subscribed the 30 day of June, A. D. 1914.
Elmer W. Voorheis,
Clerk U. S. Dist. Court, East. Dist. Mich.

PRAECIPE FOR PREPARATION OF RECORD, WITH NOTICE AND PROOF OF SERVICE.

(Filed June 30, 1914.)

And now comes the plaintiffs and appellants by Fred A. Baker, their solicitor and indicates the portions of the record to be incorporated into the transcript on their appeal from the order and decree of the Court, dismissing the original and supplemental bills of the plaintiffs, viz:—

The whole record from the bill of complaint to proof of service of the citation, both inclusive.

Fred A. Baker,
Solicitor for Appellants

To Mr. Clyde I. Webster,
District Attorney,
Solicitor for Defendant & Appellee.

Sir:—You will please take notice that on the 30th day of June, 1914, a praecipe was filed in the above entitled cause and you are herewith served with the above copy thereof.

Fred A. Baker,
Solicitor for Appellants.

Eastern District of Michigan, ss.

On this the 30th day of June, 1914, before me Clerk of the U. S. District Court of the Eastern District of Michigan, personally appeared Fred A. Baker, and made oath that on the 30th day of June, 1914, at Detroit, in said District, he served a copy of the above and foregoing praecipe and notice upon Clyde I. Webster, U. S. District Attorney, by leaving the same at his office with Asst. Dist. Atty. Bland in charge thereof.

Elmer W. Voorheis,
Clerk U. S. Dist. Court
East. Dist. of Michigan.

UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of Michigan.

JOHN F. DODGE, HORACE E. DODGE, Complainants and Appellants,
vs.
JAMES J. BRADY, Collector of Internal Revenue, Defendant and Appellee.

EASTERN DISTRICT OF MICHIGAN,
Southern Division, ss:

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the within and foregoing is a true and correct transcript of all the records and proceedings in the within entitled cause; that I have compared the same with the originals on file and of record in my office, and that the within and foregoing record is a true and correct transcript of the whole and of every part thereof.

In testimony whereof, I have hereunto set my hand and affixed the official seal of said court, at Detroit, in said District, this Twenty-eighth day of July, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States of America the one hundred and thirty-ninth.

[Seal of the U. S. District Court, Eastern District of Mich.]

ELMER W. VOORHEIS, *Clerk.*

Endorsed on cover: File No. 24,325. E. Michigan D. C. U. S. Term No. 581. John F. Dodge and Horace E. Dodge, appellants, vs. James J. Brady, collector of internal revenue. Filed July 30, 1914. File No. 24,325.